

The Honorable Robert J. Bryan
United States Magistrate Judge Karen L. Strombom

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MARVIN HUNTER, an Individual,

Plaintiff,

v.

JEROME WILEN, TIM THRASHER,
and CORYDON WHALEY,

Defendants.

NO. 13-5427RJB/KLS

STIPULATED PROTECTIVE ORDER

NOTING DATE: November 19, 2013

PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, prison security-related, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords

1 from public disclosure and use extends only to the limited information or items that are entitled
 2 to confidential treatment under the applicable legal principles, and it does not presumptively
 3 entitle parties to file confidential information under seal.

4 This stipulation and order arises from numerous discussions and communications
 5 between the parties' counsel, including a discovery conference under Fed. R. Civ. P. 26.
 6 Plaintiff's counsel has requested documents. In response, defendants have produced redacted
 7 documents and withheld some other records citing exemptions under the Washington State
 8 Public Records Act, analogous exemptions under the Federal Freedom of Information Act
 9 (FOIA) and federal cases protecting information related to prison security. Plaintiff does not
 10 agree there is a basis for withholding this information, but nevertheless agrees to this
 11 stipulation and order in order for his counsel of record to have restricted discovery and to
 12 prepare for trial in this matter.
 13
 14

15 The parties reserve the right to seek amendment of this stipulation and order's terms on
 16 motion after meeting and conferring as required herein.

17 **“RESTRICTED - CONFIDENTIAL” MATERIAL**

18 “Restricted - Confidential” Material shall include the following documents and tangible
 19 things produced by Defendants’ counsel that may not be shared with Plaintiff Marvin Hunter
 20 and other persons unless specifically permitted under this stipulation and order, until further
 21 order of this Court: internal prison intelligence and investigative records regarding the assault
 22 involving the plaintiff on June 16, 2010, including, but not limited to: (1) confidential
 23 informants' names and identifying information; and (2) identification of offenders as belonging
 24 to security threat groups (STGs). This stipulation and order also protects documents
 25
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1 containing specific intelligence information claimed to be exempt from public disclosure under
 2 RCW 42.56.240(1) and (10). These documents are further identified as follows:

3 20503194 – 3204
 4 20503261
 5 20503263 – 3264
 6 20503322 – 3332, 3381, 3383 – 84
 7 20503943 – 3945
 8 20503977 – 3988, 4036, 4038 – 39, 4060, 4091
 9 20504127 – 4137, 4186, 4188 – 89, 4210, 4241
 10 20700001 – 016
 11 21200058, 061, 063, 068, 075, 078, 085, 086, 089, 097, 103, 104, 147, 158, 161-162, 163, 201
 12 21300028 – 029, 030 – 31, 043, 086, 101 – 102, 114
 13 21500027
 14 90050015 – 022
 15 90050079
 16 90050081 – 082
 17 90050105
 18 90050136

13 SCOPE

14 The protections conferred by this agreement cover not only Restricted - Confidential
 15 Material (as defined above), but also (1) any information copied or extracted from Restricted -
 16 Confidential Material; (2) all copies, excerpts, summaries, or compilations of Restricted -
 17 Confidential Material; and, (3) any testimony, conversations, or presentations by parties or
 18 their counsel that might reveal Restricted - Confidential Material.
 19

20 ACCESS TO AND USE OF RESTRICTED - CONFIDENTIAL MATERIAL

21 1. Basic Principles. Plaintiff Marvin Hunter's counsel of record may use
 22 Restricted - Confidential Material that is disclosed or produced by Defendants' counsel in
 23 connection with this case only for prosecuting, defending, or attempting to settle this litigation.
 24 Until further order of this Court, the Restricted - Confidential Material may be disclosed only
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1 to the categories of persons and under the conditions described in this agreement. Restricted -
 2 Confidential material must be stored and maintained by Plaintiff's counsel at a location and in
 3 a secure manner that ensures that access is limited to the persons authorized under this
 4 agreement.

5
 6 2. Disclosure of "RESTRICTED - CONFIDENTIAL" Information or Items.

7 Unless otherwise ordered by the court or permitted in writing by the Defendants' counsel,
 8 Plaintiff's counsel may disclose any Restricted - Confidential material only to:

9 (a) employees of Plaintiff's counsel to whom it is reasonably necessary to
 10 disclose the information for this litigation;

11 (b) the court, court personnel, and court reporters and their staff;

12 (c) experts and consultants hired by Plaintiff to whom disclosure is
 13 reasonably necessary for this litigation and who have signed the "Acknowledgment and
 14 Agreement To Be Bound" (Exhibit A), *provided* that Plaintiff's counsel shall redact the names
 15 of any confidential source or confidential informer and *provided further* that Plaintiff's counsel
 16 shall provide defense counsel 48 hours' notice (exclusive of weekends and legal holidays) of
 17 the proposed form of disclosure, subject to the "Meet and Confer" and "Judicial Intervention"
 18 sections below;
 19

20 (d) during their depositions, witnesses in the action who are or were
 21 employed as prison officials to whom disclosure is reasonably necessary and who have signed
 22 the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by
 23 the designating party or ordered by the court. Pages of transcribed deposition testimony or
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 25
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1 exhibits to depositions that reveal confidential material must be separately bound by the court
 2 reporter and may not be disclosed to anyone except as permitted under this agreement;

3 (e) the author or recipient of a document containing the information or a
 4 custodian or other person who otherwise possessed or knew the information.

5
 6 3. Filing Restricted - Confidential Material. Before filing confidential material or
 7 discussing or referencing such material in court filings, the filing party shall confer with the
 8 designating party to determine whether the designating party will remove the confidential
 9 designation, whether the document can be redacted, or whether a motion to seal or stipulation
 10 and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
 11 followed and the standards that will be applied when a party seeks permission from the court
 12 the file material under seal.

13
 14 4. Meet and Confer. The parties must make every attempt to resolve any dispute
 15 regarding restricted - confidential material without court involvement. Any future motion
 16 regarding restricted - confidential material must include a certification, in the motion or in a
 17 declaration or affidavit, that the movant has engaged in a good faith meet and confer
 18 conference with other affected parties in an effort to resolve the dispute without court action.
 19 The certification must list the date, manner, and participants to the conference. A good faith
 20 effort to confer requires a face-to-face meeting or a telephone conference.

21
 22 5. Judicial Intervention. If the parties cannot resolve a dispute regarding restricted –
 23 confidential material without court intervention, either party may file and serve a motion to
 24 amend this stipulation and order under Local Civil Rule 7 (and in compliance with Local Civil
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1 Rule 5(g), if applicable). All parties shall continue to maintain the material in question as
 2 restricted -confidential until the court rules on the pending dispute.

3 **DESIGNATING PROTECTED MATERIAL**

4 1. Manner and Timing of Designations. Restricted-Confidential Material must be
 5 clearly so designated before or when the material is disclosed or produced.
 6

7 (a) Information in documentary form: (*e.g.*, paper or electronic documents
 8 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 9 proceedings), the designating party must affix the words “RESTRICTED - CONFIDENTIAL”
 10 to each page that contains confidential material. If only a portion or portions of the material on
 11 a page qualifies for protection, the producing party also must clearly identify the protected
 12 portion(s) (*e.g.*, by making appropriate markings in the margins).
 13

14 (b) Testimony given in deposition or in other pretrial or trial proceedings:
 15 the parties must identify on the record, during the deposition, hearing, or other proceeding, all
 16 protected testimony, without prejudice to their right to so designate other testimony after
 17 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
 18 deposition transcript, designate portions of the transcript, or exhibits thereto, as restricted-
 19 confidential.
 20

21 (c) Other tangible items: the producing party must affix in a prominent
 22 place on the exterior of the container or containers in which the information or item is stored
 23 the word “RESTRICTED - CONFIDENTIAL.” If only a portion or portions of the
 24 information or item warrant protection, the producing party, to the extent practicable, shall
 25 identify the protected portion(s).
 26

2. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "RESTRICTED - CONFIDENTIAL," that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and,

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed restricted-confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately: (a) notify in writing the designating party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the

1 protected material; (c) inform the person or persons to whom unauthorized disclosures were
 2 made of all the terms of this agreement; and, (d) request that such person or persons execute
 3 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.
 4

5 **INADVERTENT PRODUCTION OF PRIVILEGED OR**
 6 **OTHERWISE PROTECTED MATERIAL**

7 When a producing party gives notice to receiving parties that certain inadvertently
 8 produced material is subject to a claim of privilege or other protection, the obligations of the
 9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 10 provision is not intended to modify whatever procedure may be established in an e-discovery
 11 order or agreement that provides for production without prior privilege review. Parties shall
 12 confer on an appropriate non-waiver order under Fed. R. Evid. 502.
 13

14 **NON-TERMINATION AND RETURN OF DOCUMENTS**

15 Within 60 days after the termination of this action, including all appeals, each receiving
 16 party must return all restricted-confidential material to the producing party, including all
 17 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
 18 methods of destruction. Notwithstanding this provision, counsel are entitled to retain one
 19 archival copy of all documents filed with the court, trial, deposition, and hearing transcripts,
 20 correspondence, deposition and trial exhibits, expert reports, attorney-work product, and
 21 consultant and expert work product, even if such materials contain confidential material. The
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1 confidentiality obligations imposed by this agreement shall remain in effect until a designating
2 party agrees otherwise in writing or a court orders otherwise.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED this _____ day of November, 2013.
7

8 _____
9 Daniel J. Judge
10 WSBA No. 17392
11 Attorney for Defendants

12 DATED this _____ day of November, 2013.
13

14 _____
15 Fred Diamondstone
16 WSBA No. 7138
17 Attorney for Plaintiff

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.
19

20 DATED this 21 day of November, 2013.
21

22 
23 Karen L. Strombom
24 United States Magistrate Judge
25
26

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name],
 of _____ [print full address],
 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Western District of
 Washington on _____ [date] in the case of ***Hunter v. Jerome Wilen, Tim
 Thrasher and Corydon Whaley, Cause No. 3:13-cv-5427-RJB-KMS***. I agree to comply with
 and to be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the
 United States District Court for the Western District of Washington for the purpose of
 enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings
 occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ US Mail Postage Prepaid via Consolidated Mail Service and Emailed to:

Fred Diamondstone
1218 Third Ave., Suite 1000
Seattle, WA 98101
fred@freddiamondstone.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this ____ day of November, 2013, at Tumwater, WA.

By: s/Daniel J. Judge
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